

U.S. DISTRICT COURT

DISTRICT OF NEW JERSEY - TRENTON

HOSPIRA, INC., et al., : Docket No.: CV-09-4591
:
Plaintiffs, : Trenton, NJ
:
vs. : November 16, 2010
:
SANDOZ INTERNATIONAL GMBH :
et al., :
:
Defendants. :

TRANSCRIPT OF CONFERENCE HEARD BEFORE
THE HONORABLE TONIANNE J. BONGIOVANNI, U.S.M.J.

TRANSCRIPT ORDERED BY:

DANIELLE RENEE STIPO
(Hill Wallack, LLP)

A P P E A R A N C E S:

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I N D E X

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ARGUMENT:

PAGE

By: Mr. D'Amore

6, 14, 16, 22

By: Mr. Meloro

12, 20

By: Mr. Chang

15

COURT DECISION

Reserved

1 THE COURT: Good morning. How are you?

2 MR. D'AMORE: Good morning, Judge.

3 MR. MELORO: Good morning, Your Honor.

4 MR. CHANG: Good morning, Your Honor.

5 THE COURT: Thanks for being available. I set this
6 up to see if we can come up with a practical approach or, at
7 least, understand the ramifications of what I am doing.

8 As you know, I had sent out through my law clerk,
9 Tom, a notice that because Sandoz Canada is a separate entity,
10 separate party, and as such is entitled to their own rights, I
11 am permitting that they serve their invalidity and non-
12 infringement contentions.

13 And I therefore, recognize that for -- I'm sorry,
14 did I just mis-- mis-speak. I want to make sure I said,
15 Sandoz Canada.

16 MR. D'AMORE: You did, Your Honor.

17 THE COURT: Okay. And then I -- I recognize that
18 therefore it might be a distinction without a difference for
19 Sandoz, Inc.

20 And what I have asked is that I was willing to hold
21 a hearing on the diligence issue regarding Sandoz, Inc. And
22 then there was a fluffy of correspondence indicating that that
23 might run a foul of attorney client privilege. And then there
24 was some suggestion that they, Sandoz, Inc., just be allowed
25 to join in Sandoz, Canada.

1 So, getting back to the perhaps, distinction without
2 a difference. As I understand it, certainly if the patents
3 are held to be invalid, they are invalid as to everyone, I
4 guess, in perpetuity.

5 If there is non-infringement, then it's -- it would
6 be as to that product by that party. And perhaps here it
7 makes no difference if there is non-infringement. Then that
8 certainly would apply to everyone, as well.

9 What I don't want to have happen, and I just want to
10 be clear, because I am taking this 3.7 extremely seriously and
11 I'm not suggesting that the parties aren't either, but my
12 course of action in all likelihood in these cases going
13 forward is to hold a hearing. And unless there is really, for
14 example, a discreet distinct article that somehow arises after
15 the fact, perhaps I won't need to hold a hearing.

16 But if I have a question about diligence and
17 specifically, what a party should have known when, I
18 think I need to have testimony and give the other side
19 the opportunity to cross-examine and challenge that
20 assertion.

21 And I recognize that Sandoz, Inc. is not
22 interested or not in the position, so you say, to put
23 on the person, who would testify as to diligence
24 because of attorney client issues. Okay. Thank you
25 for your patience.

1 So, here is -- here is my thought. I'm
2 concerned about the sword and shield issue. And I'm
3 not inclined to grant Sandoz, Inc.'s application
4 without a hearing and some sort of testimony. If
5 Sandoz, Inc., is simply going to ride the coattails of
6 Sandoz Canada, Inc. and whatever arguments, whether
7 it's collateral estoppel, res judicata, and you want
8 to make those arguments after the fact when there's a
9 ruling, I do not have any objection to that. I just
10 don't want you to be an extra voice in this process
11 and file additional papers or make any arguments. I
12 want Sandoz Canada, Inc. to be essentially a stand
13 alone.

14 For the third time, perhaps the distinction,
15 in this case without a difference, but I don't want to
16 set bad precedent for other cases, when I may have
17 very separate entities, separate defendants, clearly
18 not at all related standing in the shoes of Sandoz
19 Canada and Sandoz, Inc. And I don't want to hear "it
20 doesn't matter because no harm, no foul since they are
21 able to make these arguments." I'm still going to
22 hold the Sandoz, Inc. persona responsible for
23 establishing why they had not -- why they have not
24 failed to exercise diligence, if that's the way to put
25 it.

1 So, Mr. Abraham, on your end, let me hear
2 your thoughts as to whether that works for you.

3 MR. D'AMORE: Your Honor, this is -- this is
4 Mr. D'Amore from Morrison and Foerster. And thank you
5 for -- for hearing us today.

6 I think Your Honor has -- has identified
7 that it -- that it -- that it -- that it is our view
8 that there would be no difference at the end of the
9 case whether -- whether Incs. contentions are -- are
10 allowed in and of their own right or not.

11 And but -- we -- but, I understand Your
12 Honor's -- Your Honor's views in that regard, as well.

13 On the record currently as it stands,
14 Canada's contentions are contained additional
15 information that Inc.'s does not -- that Inc.'s do not
16 have. So, while I don't think we're in a position to
17 say Inc. is going to -- on the -- on the -- on the
18 record as it stands, Inc., Inc. will -- will step back
19 and not have it's own voice. Right now, the -- the
20 contentions as they're stated are ones -- it contains
21 more -- more references than the other.

22 Now, today's pitch, Your Honor, would like
23 to inquire into Sandoz Inc.'s diligence. I don't want
24 to stay that we're foreclosing the possibility of
25 putting in additional evidence in that regard.

1 I -- I appreciate Your Honor's sense that
2 they're -- that they are -- that you're interested in
3 having a hearing. I've -- I've looked at the
4 contentions case law, and I haven't seen precedent for
5 a hearing. I've seen precedent for -- I did for
6 supplemental declarations and the like, which I think
7 is what -- and generally those come from attorneys of
8 -- of record, because diligence can only be shown
9 based on the work of -- of -- of trial counsel.

10 So, I think the way the Courts have handled
11 that if they -- if additional evidence is -- is -- is
12 requested, it's provided by -- by a declaration.

13 And I think that's something that if Your
14 Honor would be -- would be interested in, we can talk
15 about.

16 THE COURT: Okay. Two thoughts. One, is I
17 like to be a trailblazer. The second more serious
18 thought is I suppose I somewhat disagree with you that
19 trial counsel is the only way to satisfy me that you
20 exercised diligence.

21 For example, if you have an inventor or some
22 scientist, understanding -- or some expert, now
23 understanding that a piece of prior art has some
24 significance, than that's the person that would
25 testify that they brought it to Counsel's attention

1 and -- and on such and such a date they realized.

2 Now, I -- I recognize that it would be
3 touching upon what they informed trial counsel, but I
4 don't see it that it's only the attorney that needs to
5 testify.

6 Quite frankly, I don't -- I don't
7 contemplate that in every single case I'm going to
8 require a hearing. But if I have a situation where
9 we're talking about what someone could have known
10 based on the -- or could have asserted based on the
11 information that was before them, I really do think
12 that that's something I want to have subject to cross
13 examination. Because reading that -- the declarations
14 just simply often look like, "I have to" versus "no,
15 you have not" and that does no good to me.

16 So, that's really where I come down with the
17 idea of requiring a hearing to determine whether or
18 not someone should have known that this is an
19 invalidity contention or whatever the situation may
20 be, that could have been raised sooner.

21 Essentially, what's the significance of this
22 piece of prior art or this article? If it's simply:
23 when did you get it in your hands? And this was just
24 discovered, then that's something that a declaration
25 in all likelihood would address.

1 So, that's a concern I have in this
2 particular case. And frankly, I have it in another
3 case, as well, where -- where we're talking about a
4 monumental amount of new pieces of prior art.

5 MR. D'AMORE: I -- I understand that, Your
6 Honor. This is Mr. D'Amore, again. So, if I -- if I
7 may, the -- the -- the facts in this case are not of
8 the -- the category that you identified where there's
9 some scientist or -- or expert to identify the pieces.

10 The facts are that, I think, as we've set
11 forth in -- in our pleadings, a couple of the
12 references were identified and then became -- we're --
13 we're identified earlier this year and then we be-- we
14 realized there importance a little later this year.

15 Some of the references, some of the
16 documents really are documents produced by plaintiffs
17 and were not documents that we could have found
18 earlier. So -- so to the extent, Your Honor, would
19 like more specificity in that regard, what did we know
20 and when did we know it?

21 What I might suggest is we put those facts
22 in by declaration. And if Your Honor would still be
23 interested in having a hearing or having a cross
24 examination, that's something we can talk about. But
25 I do think in this case, the facts are when did the

1 references come to -- come to, really, Counsel's
2 attention?

3 THE COURT: Well, I can tell you that on the
4 first prong, where you -- you mention that you had
5 information in your hands and you didn't realize the
6 significance until X date, that's precisely what I
7 want to have a hearing on.

8 Because if you just failed to pay attention,
9 failed to line it up, because of volume or the like
10 that, to me, might not be enough to say that you were
11 diligent because you looked at five million other
12 documents and then these two got buried.

13 I need to understand what about that
14 document should -- or those items -- should have been
15 glaring to you. And, again, I think that's an area
16 where I want to have cross examination on that.

17 I don't know whether it only needs to be by
18 counsel, because I don't honestly know who behind the
19 scenes is assessing the significance of that document.

20
21 So, whoever's the person who's reviewing the
22 document and then realizing that it may be the basis
23 for a contention of some sort, is perhaps the person
24 that needs to get on the stand. And I don't know that
25 that's only trial counsel.

1 But in short, Mr. D'Amore, I guess what I'm
2 doing is leaving your client with an alternative. The
3 first would be if you want to just simply rely upon
4 what Sandoz Canada, Inc. does with it's contentions
5 and argue after the fact regarding res judicata or
6 collateral estoppel if those are the proper terms,
7 that's fine. But, I would not have you raising
8 separate arguments on behalf of Sandoz, Inc.

9 If you want Sandoz, Inc. to be able to file
10 documents in this matter and argue in this matter as
11 to additional contentions, then I need to have a
12 hearing.

13 MR. D'AMORE: I understand that, Your Honor.
14 And I said -- and you're not -- as I understand what
15 you're saying here, you're not foreclosing Inc. from
16 relying on it's initial contentions, if you --

17 THE COURT: No. I'm certainly not.
18 Absolutely not. It's just a matter of whether or not
19 you were able to amend.

20 MR. D'AMORE: I -- I -- I -- I understand
21 that. I think the -- the -- delta between the -- that
22 is something I can talk over -- I will -- I will
23 present that alternative to my client, Your Honor. I
24 don't have an answer for you right this moment.

25 THE COURT: --

1 MR. D'AMORE: But I will be able to get you
2 a responsive letter on that. Today is Tuesday. I
3 expect within a week.

4 THE COURT: Perfect. All right. Anything
5 on the plaintiff's side regarding this issue?

6 MR. MELORO: Yes, thank you, Your Honor.
7 This is Tom Meloro, from Wilke Farr. I -- I -- I
8 think that at this point, we need to wait to hear
9 defendant's position clearly.

10 If they wish to amend, we -- we -- we would
11 like the opportunity to cross examine. I hear Counsel
12 to say that they would continue to rely on the
13 affidavit of their trial counsel and therefore, you
14 know, for the reasons that the Court has indicated, we
15 would like the opportunity to cross examine. And we
16 think there would be serious questions about the
17 diligence issue.

18 To the extent that Sandoz, Inc. is going to
19 withdraw it's request to amend and rely only on it's
20 original contentions and then attempt to argue
21 collateral estoppel or res judicata later if it turns
22 out the Sandoz Canada prevails on some defense that
23 Sandoz, Inc. did not have, I -- I would just note that
24 we would reserve our right to oppose any action by
25 Sandoz, Inc. at that point to invoke collateral

1 estoppel or res judicata. But my expectation is that
2 if that ever became a live issue, that the Court would
3 address it at that point.

4 THE COURT: That's right. Okay.

5 The next thing, and I don't know how far I
6 can get with this because frankly, I did receive your
7 letter regarding the location of the depositions
8 yesterday afternoon. And last night I happened to be
9 speaking on a patent panel, of all things, up at Seton
10 Hall that was sponsored by Gibbons. So, I didn't have
11 the opportunity other than while I was waiting to take
12 the stage to review it.

13 But it seems to me, let's see if we can make
14 any progress with this. It seems to me you have
15 really the issue of the depositions of the two
16 doctors, A-A-N-T-A-A. How do you say that name?

17 MR. MELORO: That's Dr. Aanta.

18 THE COURT: Aanta, okay. And then V-I-R-T-
19 A-M-E-N. Virtamen?

20 MR. MELORO: I -- I think it might be
21 Virtamen. But, we -- we -- we can go by whatever
22 pronunciation we want, at least for today.

23 THE COURT: That's true. In the record,
24 it's all -- it all sounds the same. But, and then
25 there are other folks that you are intending to

1 depose. So, let me start with those other folks.

2 Are there any doctors or inventors, experts,
3 who are going to be deposed in Finland already by
4 agreement?

5 MR. D'AMORE: Your Honor, this is -- this is
6 Mr. D'Amore. We have not agreed to depose anyone in
7 Finland, as of this time, other than the two doctors
8 you've identified, plaintiffs have proposed one
9 witness, Dr. Karjalainen. And what we've told them is
10 if -- we only want his deposition, we want it in the
11 United States. We only want his deposition if he's
12 going to come to the United States for trial. And we
13 don't need that now.

14 THE COURT: All right.

15 MR. D'AMORE: And then there's a 30V6
16 witness, of course, but that's a separate question.

17 THE COURT: And where's the 30V6 witness
18 taking place?

19 MR. D'AMORE: It hasn't been agreed yet. We
20 have said that they need to come to the jurisdiction
21 where they sued. Plaintiff's had said it should take
22 place in Finland.

23 THE COURT: All right. And who is that
24 witness?

25 MR. D'AMORE: His name I can't pronounce.

1 It begins with an H.

2 THE COURT: All right. That's that very
3 long name.

4 MR. CHANG: That's Hopolina (phonetic).
5 Your Honor, this is Eugene Chang, from Wilke Farr, for
6 plaintiff.

7 That -- the corporate witness is Dr.
8 Hopolina.

9 THE COURT: Right. And I see him. He's
10 mentioned on page 8 of the joint submit-- submission.
11 And -- all right. So, you folks are also having a
12 dispute as to where his deposition should take place.

13 MR. CHANG: Your Honor, our position on Dr.
14 Hopolina is, if they're going to be in Finland anyway,
15 they should take his deposition there.

16 THE COURT: Right. But if -- what if we
17 didn't have these other witnesses in play? Then the
18 30V6 would generally be here; right?

19 MR. CHANG: Yes. The idea is that, you
20 know, here, if everybody is bringing their witnesses
21 to the forum, and in general, we've been -- we've
22 agreed to do so with a lot of our other witnesses, if
23 that's the general rule people are playing by, then we
24 would do that and then that makes sense.

25 Here, they have -- they're insisting that

1 they're Germany witnesses be deposed in Germany for
2 their witnesses' convenience. And it would obviously
3 be burdensome for our witnesses to come over from
4 Finland.

5 But if everybody agrees to bring their
6 witnesses to the jurisdiction, we would -- we would do
7 so, as well.

8 THE COURT: Now, I hate to say this but it
9 sounds like someone may have made an agreement without
10 locking in the Finland witnesses. Because it sounds
11 like you folks have already agreed to -- to do the
12 depositions of the defendant's witnesses in Germany
13 and that you didn't get an in kind explicit agreement
14 regarding the Finnish folks.

15 MR. D'AMORE: Your Honor, this is -- this
16 Mr. D'Amore. We -- they actually noticed the German
17 witness for Germany.

18 THE COURT: Uh-huh.

19 MR. D'AMORE: To the extent that -- that it
20 needs to be discussed, we're happy to -- to -- to
21 discuss that with plaintiffs if there's an alternative
22 location that would be appropriate.

23 THE COURT: Well, I don't think it's any
24 secret that the way the Court generally operates is
25 what makes sense. And what makes sense involves

1 whether or not, the witnesses are plaintiffs who has
2 brought this suit. I recognize that plaintiff brought
3 this suit here in New Jersey. They should be expected
4 to then have some, perhaps, additional inconvenience
5 for their witnesses, if that's the phrase we want to
6 use. But there is also the very practical aspect of
7 the economics.

8 Where are all the documents located?

9 MR. D'AMORE: Right now, documents that have
10 been produced, Your Honor, are pretty --
11 electronically and in our offices. This is Mr.
12 D'Amore.

13 THE COURT: So, if you're doing these
14 depositions of whichever witnesses, if you were --
15 when you travel to Germany, for example, you're going
16 to have to bring all of them with you, print them out,
17 download them, whatever, over there?

18 MR. D'AMORE: Correct. And for Finland, I
19 also need to bring a -- I need to bring a court
20 reporter. I need to bring a videographer. I need to
21 put them all up.

22 THE COURT: Uh-huh.

23 MR. D'AMORE: Because Finland does not have
24 those -- those -- those facilities. And the costs are
25 tremendously expensive compared to the United States.

1 THE COURT: And I have actually heard that
2 before.

3 Now, tell me the issue with Dr. Aanta. It
4 sounds like you are not in agreement as to whether or
5 not the contract that he executed permits him or that
6 he's signing on essentially to be required to travel
7 in the event that his testimony is necessary, that
8 he's now no longer a client.

9 I'm sorry. He's now no longer an employee
10 of the plaintiff. And therefore, we have this concern
11 about whether or not he can be compelled. And I know
12 that there's a little discussion in the papers that
13 you've submitted. So, just talk to me a little bit
14 about that.

15 MR. D'AMORE: Certainly, Your Honor. Our
16 understanding is that he was -- this is Mr. D'Amore.
17 He was an employee of the plaintiffs at one point in
18 time. I think he -- I -- my understanding and this
19 may be subject to -- to correction, is that he
20 continues to be an advisor or a consultant with them.

21
22 But the -- the important aspect in terms of
23 the contract is that his assignment for the invention
24 is very clearly, and has been held by other -- other -
25 - other courts to require him to testify in any legal

1 proceeding and do everything possible to aid -- , to
2 obtain and enforce proper patent protection for this
3 invention in the United States.

4 So, the -- the -- the -- this is discussed
5 in the Erik-- Erickron (phonetic) case. The language
6 is very similar in terms of the notice that it
7 provides to Dr. Aanta. That he needs to testify in
8 legal proceedings and that it's being -- and that it's
9 directed to obtaining patent protection in the --
10 enforcing patent protection in the United States.

11 And that's the kind of agreement the Courts
12 have enforced to compel a witness like Dr. Aanta to
13 come to the United States.

14 THE COURT: All right. And I do see that
15 the plaintiffs have cited contrary support or support
16 for their position in the submission, as well.

17 I want to, frankly, want to take a look at
18 those cases and then decide what impact Dr. Aanta has.
19 But just again so I'm clear, we have Dr. Aanta, at
20 least at this point, being in disagreement as to
21 whether it's appropriate because he's no longer an
22 employee.

23 We have Dr. Virtamen also, is -- he's an
24 employee, and the question is whether he's in Finland
25 or here.

1 And then Dr. Hopolina who is the 30(b)(6),
2 who presumptively would be here, and the question then
3 becomes whether or not if -- if you're going to
4 Finland, you just go there for him, as well.

5 Is there anyone else that I'm missing? I'm
6 just flipping through.

7 MR. MELORO: Your Honor, this is Tom Meloro.
8 The -- the only other witness was one mentioned --

9 THE COURT: Oh. Yeah. Karjalainen or
10 however you say that?

11 MR. MELORO: It -- I -- something to that
12 effect. I think it's Karjalainen? And I think -- he
13 is a former employee. He does not have this sort of
14 agreement that's at issue with the analysis regarding
15 Dr. Aanta.

16 Plaintiffs have -- plaintiffs have told
17 defendants that we may call him as a trial witness.

18 THE COURT: And he's the one who you just
19 mentioned, Mr. D'Amore, that if he comes here, if
20 they're calling him at trial, and he comes here,
21 you'll take care of him when he arrives.

22 MR. D'AMORE: That's correct, Your Honor.

23 THE COURT: Okay.

24 MR. D'AMORE: If, you know -- that's
25 correct.

1 MR. MELORO: Your Honor, since -- since we
2 obviously aren't going to know until we get closer to
3 trial whether we will call him as a trial witness, we
4 are offering him for deposition now.

5 And it would be unfair, I think, for us to
6 have to go through all the fact and expert discovery
7 and -- and -- and then to have a deposition take place
8 shortly before trial, while we're in the midst of all
9 our final trial preparations, etcetera. So, that --
10 that was the reason why we offered him for a
11 deposition now.

12 THE COURT: All right. Well, here would be
13 my suggestion. If I rule in favor of Hospira and the
14 defendants are traveling for any purpose over to
15 Finland, then you could add him to the mix. Then just
16 for the court reporters sake, the name is K-A-R-J-A-L-
17 A-I-N-E-N.

18 If I am requiring that the depositions of
19 all the Finnish individuals, doctors, take place here,
20 then I would leave it to Hospira whether in advance of
21 trial, you would want to have or ask him to shlep
22 here, as well.

23 And perhaps if that happens, you folks can
24 agree to a video deposition. You know, that could be
25 used at trial. So, depene essia (phonetic) in

1 essence. That's certainly something that you can
2 consider.

3 All right. So, let me take a look at the
4 case law regarding Dr. Aanta. And I'll get you folks
5 a decision as soon as possible.

6 Did you have dates that you were targeting?
7 I don't recall.

8 MR. D'AMORE: Your Honor, that's I think
9 part of the issue. They've proposed four or five days
10 of deposition across two weeks. That's part of the
11 expense. It begins on -- on -- my understanding is
12 they proposed a date beginning Friday, December 10th,
13 beginning again Monday December 13th, and then
14 continuing -- continuing thereafter. That's time that
15 I've got to pay to -- to put up the court reporter and
16 videographer in Finland under their schedule.

17 THE COURT: Uh-huh.

18 MR. D'AMORE: I don't know how -- whether
19 their dates are fixed. Certainly we're available
20 after that and in January. And if the witnesses are
21 coming here, then they don't need to be -- to be done
22 altogether.

23 THE COURT: Okay.

24 MR. D'AMORE: If I might just add one point,
25 Your Honor.

1 THE COURT: Yes.

2 MR. D'AMORE: Depending on your -- your --
3 actually two points. One is there's no reason that if
4 -- that if we're waiting, that we can't get their 30V6
5 witness on the schedule here in the United States. I
6 -- I understand the efficiencies to doing it
7 altogether. But, at the same time, the fewer days,
8 I've got to -- I have to spend in Finland, the -- the
9 -- the -- the less expense of it is on -- on my
10 client.

11 And the second is to the extent, Your Honor
12 is -- is factoring in the expense, a -- a cost
13 shifting, we would req-- we would request that if any
14 witnesses need to be deposed in Finland, that some
15 cost shifting apply.

16 THE COURT: I know that after your meet and
17 confer, you couldn't come up with an agreement. I
18 don't know if you're revisiting the Germany
19 depositions at all in light of this discussion.

20 But I certainly invite you that if you can
21 come up with a compromise, perhaps the 30(b)(6) comes
22 here, and you agree that you'll -- you will do Dr. K.,
23 as I'll call him, perhaps in Finland, and maybe you
24 can get the defendants to agree to go over for a
25 shorter more finite period. And if you work any of

1 that out, certainly, let me know.

2 My plan is to pull the case law and I will
3 get you a decision as soon as possible. But let me be
4 practical for a minute. I don't want to add to the
5 expense of what you may have to incur assuming I send
6 you folks to Finland. And, you know, again, I'm
7 speaking very practical, very plainly.

8 Even if I get you a decision within the next
9 week, I don't know what that does to reservations and
10 the like. So, if you want to set aside some time
11 perhaps in January where you have dates on hold that
12 in the event I am ordering that anything occur in
13 Finland, that you, at least, can keep some costs down
14 by having the opportunity to book your tickets 30 days
15 in advance or the like. I'm fine with that.

16 I know we have a 30 -- the 30 month stay
17 expires in -- when is it? January, 2012, and that
18 you're anxious to move things along. But I just offer
19 that as a potential compromise. Because even if I
20 turn around and get you a decision this week, you've
21 still got just a couple of weeks to book all of this.
22 So, I throw that out there.

23 If you work anything out, bless you. And
24 just let me know asap, otherwise, I'll add this to my
25 patent pile.

1 MR. MELORO: Your Honor, this is Tom Meloro.
2 We very much appreciate that. And I -- I would expect
3 that if there's going to any further discussion, I
4 mean, thus far, the Germany depositions have been cast
5 in stone. But if there's going to be any further
6 discussion, I would anticipate that that would take
7 place in the next day or two. So perhaps, we would
8 just report back in a couple of days, obviously, if we
9 have an agreement, but maybe if we've talked and we
10 don't. We'll know the --

11 THE COURT: That would be great. Even if
12 you just send a quick little email, it doesn't have to
13 be anything fancy. Deal, no deal. And I'll get the
14 message.

15 MR. MELORO: Thank you. And then as far as
16 dates are concerned, we -- we had reserved a time that
17 I think Mr. D'Amore outlined in Finland. We'd be
18 prepared to go ahead. And I think if we got a ruling
19 in a week from the Court, that would be sufficient
20 time at least from our perspective. To the
21 extent that those dates didn't happen, I don't know
22 the availability of the witnesses at this point. Dr.
23 Hopolina is a fairly high ranking official at Orion.
24 Dr. Aanta, who's one of the witnesses, who was a
25 former employee, he hasn't worked at the company for

1 quite some time. He has a very high ranking position
2 at a research institution.

3 So, I don't just know. I'd hope that
4 whatever happens, we can -- we can stick to dates that
5 the witnesses have blocked out.

6 THE COURT: All right. As I said, I just
7 threw that out there as an option for you folks to
8 contemplate. And I'll wait -- well, I won't wait.
9 I'll do the research anyway. And if I don't have to
10 put pen to paper regarding this issue, that's fine.
11 I'll just wait for your letter. But assuming you
12 can't resolve or narrow it, then I will get a decision
13 to -- for you as -- as soon as possible, mindful that
14 this might happen in December, so you need to know.

15 And -- and, Your Honor, Mr. Meloro and I
16 will and Mr. Chang and I will -- will speak, and if
17 there's something that we can -- can work out, we'll
18 advise, Your Honor.

19 THE COURT: Great. Okay. And I'll also
20 hear from you, from Sandoz, about the contentions and
21 what your client wants you to do.

22 MR. D'AMORE: Great.

23 THE COURT: Great. Thanks, guys. If I
24 don't talk to you, enjoy Thanksgiving.

25 MR. D'AMORE: All right. Thanks.

THE COURT: Bye-bye.

MR. D'AMORE: Bye-bye.

(End of proceeding)

C E R T I F I C A T I O N

I, Lisa M. Urban, the assigned transcriber,
do hereby certify the foregoing transcript of
proceedings in the U.S. District Court on November 16,
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S/ Lisa Urban
LISA M. URBAN, AOC NO. 585
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Date: November 18, 2010